

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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JOHN H. TODD and JEANNINE L. TODD,

Plaintiffs-Appellants,

V

SAGINAW POLICE OFFICERS AND FIRE  
FIGHTERS RETIREMENT SYSTEMS and CITY  
OF SAGINAW,

Defendants-Appellees.

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UNPUBLISHED  
November 9, 2001

No. 223021  
Saginaw Circuit Court  
LC No. 98-024018-CZ

Before: K.F. Kelly, P.J., and White and Talbot, JJ.

PER CURIAM.

Plaintiffs appeal as of right the circuit court's order granting defendants summary disposition pursuant to MCR 2.116(C)(10). We affirm.

This case arises out of plaintiff John Todd's retirement election of a regular service retirement; a straight life pension to the retiree that includes a pension equal to 60% of the retiree's pension payable to the retiree's surviving spouse upon the retiree's death. John Todd worked for defendants from 1970 until his retirement in 1996. He completed the requisite form electing a regular service retirement, and retired, in January 1996. John and Jeannine Todd divorced in June 1998, and Jeannine Todd's potential survivorship rights were extinguished under the terms of the pertinent pension ordinance. Before divorcing, plaintiffs requested to change the pension election, defendants refused, and plaintiffs brought this lawsuit. John Todd died in December 1998.<sup>1</sup>

A motion pursuant to MCR 2.116(C)(10) tests the factual support of a plaintiff's claim and is subject to de novo review. *Harts v Farmers Ins Exchange*, 461 Mich 1, 5; 597 NW2d 47 (1999). In reviewing a motion for summary disposition pursuant to MCR 2.116(C)(10), the court considers the pleadings, affidavits, and other documentary evidence filed in the action or submitted by the parties in the light most favorable to the nonmoving party. *Id.* "The motion is properly granted if the documentary evidence presented shows that there is no genuine issue with

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<sup>1</sup> We thus consider plaintiff Jeannine Todd to be the only plaintiff-appellant.

respect to any material fact and the moving party is therefore entitled to judgment as a matter of law.” *Id.*

Plaintiffs first argue that the circuit court erred in granting summary disposition because the retirement election, which ultimately deprived the former spouse of any potential survivorship rights, was void as against public policy. We disagree.

Plaintiffs claim the pension ordinance violated public policy because the retiree’s spouse was given no notice of the election and no opportunity to consent thereto. Plaintiffs further claim that public policy requires protection of pension rights for ex-spouses, both through the pension itself and through equitable division of the marital estate during divorce.

Statutory analysis begins by examining the general purpose of a statute and then determining if public policy concerns support application of the statute in particular factual situations. *People v Childs*, 243 Mich App 360, 367; 622 NW2d 90 (2000). If the statute is unambiguous, we must apply it as written. *Id.* “The rules governing the construction of statutes apply with equal force to the interpretation of municipal ordinances.” *Gora v Ferndale*, 456 Mich 704, 711; 576 NW2d 141 (1998).

The municipal ordinance at issue permits three pension options, including the option selected by plaintiff John Todd: a regular service retirement with a potential benefit for the retiree’s spouse. Saginaw Administrative Code, Chap 5, Art I, § 120. A spouse is defined by the ordinance as “the person to whom the retirant was legally married on both the effective date of his/her retirement and the date of his/her death.” *Id.* at § 102.1(w). The ordinance requires the pension election to be made before retirement. *Id.* at § 120.1.

The ordinance is clear on its face. A divorce after retirement necessarily removes an ex-spouse from the definition of “spouse” under the ordinance because the couple will not be legally married when the retiree dies. Therefore, for the pension option John Todd selected, the ordinance’s terms extinguish an ex-spouse’s potential survivorship rights in the event of a divorce after retirement. The ordinance forbids a change to the election after retirement. Moreover, the ordinance grants no notice of an election to a spouse or consent thereto.

Because the ordinance is unambiguous, we must apply it as written. This result does not violate public policy. See, e.g., OAG, 1989-1990, No. 6604, p 255 (October 30, 1989). Michigan law recognizes pension plans similar to the plan at issue with survivorship rights for spouses, rather than ex-spouses. For example, the firefighters and police officers retirement act, MCL 38.551 *et seq.*, includes the same pension options for a retiree. MCL 38.556(h). The retirement act mirrors the Saginaw ordinance, providing survivorship benefits only to a “spouse” to whom the retirant was legally married on both the date of retirement and the date of death. MCL 38.556(h). The act also provides no opportunity for notice to a spouse before election or consent to an election. The cases plaintiffs cite construing the Employee Retirement Income Security Act of 1974 (ERISA), 29 USC 1001 *et seq.*, are inapplicable because ERISA does not apply to governmental pension plans, including the plan at issue here. 29 USC 1002(32), 1003(b)(1); *In re Pensions of 19<sup>th</sup> Dist Judges Under Dearborn Employees Retirement System*, 213 Mich App 701, 706-707; 540 NW2d 784 (1995).

We agree with plaintiffs that the pension was a marital asset. MCL 552.18; *Hutchins v Hutchins*, 71 Mich App 361, 371; 248 NW2d 272 (1976). However, we find no support for plaintiffs' conclusion that the existence of the asset gives rise to an action against the pension plan or the city. The value of the pension should have been taken into account and equitably distributed as part of plaintiffs' divorce. *Sommerville v Sommerville*, 164 Mich App 681, 685; 417 NW2d 574 (1987); see also OAG 1989-1990, No. 6604, p 255 (October 30, 1989). Plaintiffs submitted no evidence regarding how the pension was handled in the divorce.

Plaintiffs also argue the complaint states a cause of action for a number of legal theories, including both tort and contract claims. Although we agree that several claims were stated, the circuit court granted summary disposition under MCR 2.116(C)(10) (no genuine issue of material fact), not MCR 2.116(C)(8) (failure to state a claim). The circuit court determined that no genuine material factual dispute existed whether the ordinance was clear on its face that only a surviving spouse is entitled to a continuation of a retirant's regular pension and that no factual misrepresentations were made to John Todd regarding his pension options. We agree with that conclusion.

Affirmed.

/s/ Kirsten Frank Kelly

/s/ Helene N. White

/s/ Michael J. Talbot